

V. PROCEDURAL SAFEGUARDS/DISCIPLINE

The following statements reflect the policy which the Missouri Department of Elementary and Secondary Education has established to ensure procedural safeguards for all parties involved in the education of students with disabilities (Sections 162.945, 162.950(1)(2), 162.955, 162.961(1)(2)(3)(4)(5), 162.962(1)(2), 162.963(1)(2), 162.997(1)(2), 162.998(1)(2), and 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo).

1. OPPORTUNITY TO EXAMINE EDUCATION RECORDS/PARENT PARTICIPATION IN MEETINGS

This Responsible Public Agency shall provide the parent/guardian with the opportunity to examine all education records regarding the student with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

This agency shall provide proper notification to ensure parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

A meeting does not include informal or unscheduled conversations involving staff and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that this agency's personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

This agency shall ensure parents are members of any group that makes decisions on the educational placement of their child. Procedures for notification are the same as that for notification of IEP meetings.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, this agency shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing. A placement decision may be made by a group without the involvement of the parents, if this agency is unable to obtain the parents' participation in the decision. In this case this agency must have a record of its attempt to ensure their involvement. This agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

2. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

The parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of the student. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by this agency when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by this agency responsible for the education of the student in question.

The right to an independent educational evaluation assures:

- A. that upon requesting an IEE, information about where an independent evaluation may be obtained and this agency's criteria applicable for independent educational evaluations will be given to parents.
- B. that parents have the right to an independent evaluation at public expense for any evaluation, or any component of that evaluation, with which the parents disagree. However, this agency may initiate a hearing as described in Regulation V.6, of the State Plan; to show that the evaluation is appropriate or that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.
 - 1) Public expense means that this agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.
- C. that parents cannot be required to notify this agency prior to obtaining an independent evaluation at public expense. However, it is reasonable for the agency to request notification before such an evaluation is conducted. Likewise a parent cannot be required to explain why they object to the public evaluation, but it is reasonable for the agency to ask why.
- D. that if this agency has a policy regarding reimbursement for independent evaluations, that policy will specify the factors to be considered in the determination of public funding for the evaluation. That determination will be based on:
 - 1) the qualifications and locations of the evaluators; and,
 - 2) the cost of the evaluation.

This agency may only impose limitations on the cost of an IEE if this agency uses those same limitations when conducting an evaluation. If this agency uses such cost limitations, it must ensure that its procedures require payment for an IEE at a higher rate if an appropriate IEE cannot, in light of the child's unique needs and other unique circumstances, be obtained within those cost limitations. If the cost of an IEE at public expense exceeds this agency's cost limitations, this agency will either: (a) initiate a hearing to show that the evaluation conducted by this agency was appropriate; or (b) pay either the full cost of the IEE, or pay that portion of the cost that is within the limitations, if this agency determines that an appropriate IEE could be obtained with the cost limitations and so inform the parents. In the context of an IEE, this agency may initiate a due process hearing only to show that its evaluation was appropriate, not to challenge the cost of the IEE.

- E. that if this agency has a policy regarding reimbursement for independent evaluations and that policy establishes allowable maximum charges for specific tests or types of evaluations, the maximum set will still enable parents to choose from among qualified professionals in the area and will result only in the elimination of excessive fees. The policy specifies that this agency will pay the fee for the independent evaluation up to the maximum established. Additionally, the policy anticipates that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria.
- F. that if this agency has no policy which sets maximum allowable charges for specific tests or types of evaluation, then the parents will be reimbursed for services rendered by a qualified evaluator.
- G. except for the location of the evaluation and the qualifications of the examiner, this agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
- H. that the results of an independent evaluation obtained by the parents at private expense:
 - 1) will be considered by this agency in any decision made with respect to the provisions of a free appropriate public education to the student; and,
 - 2) may be presented as evidence at a hearing under this subpart regarding that student.
- I. that the cost of an independent evaluation will be at public expense if a hearing officer requests an independent educational evaluation as part of a hearing.

3. WRITTEN NOTICE

Written notice will be given to parents a reasonable time before the agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. If the notice relates to an action proposed that also requires parent consent, this agency may give notice at the same time it requests parent consent. The notice will be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parents is not a written language, this agency shall ensure the following:

- A. that the notice is translated orally or by other means to the parents in their native language or other mode of communication;

- B. that the parents understand the content of the notice; and,
- C. that there is written evidence that those requirements have been met.

Content of Notice

The written notice sent to parents by this agency shall contain the following:

- A. a description of the action proposed or refused by this agency;
- B. an explanation of why this agency proposes or refuses to take the action;
- C. a description of any options this agency considered and the reasons for rejection of the options not selected;
- D. a description of each evaluation procedure, test, record, or report this agency used as a basis for the proposal or refusal;
- E. a description of any other factors which are relevant to this agency's proposed or refused action;
- F. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained; and,
- G. sources for parents to contact to obtain assistance in understanding their procedural safeguards.

4. PROCEDURAL SAFEGUARDS STATEMENT

A copy of the procedural safeguards statement shall be given to parents, at a minimum:

- A. upon initial referral for evaluation;
- B. upon notification of individualized education program (IEP) meetings; and,
- C. upon reevaluation of the student.

5. WRITTEN CONSENT

Written, informed, consent of the parent shall be obtained by this agency from a parent prior to:

- A. commencing the initial evaluation, if additional testing is needed, or any additional testing as part of the reevaluation process; or,
- B. initial provision of special education or related services to a student with a disability.

Consent for initial evaluation may not be construed as consent for initial placement. Parent consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Written consent is not necessary for any subsequent placements and consent for reevaluations need not be obtained if this agency can demonstrate that it had taken reasonable measures to obtain consent and the parent failed to respond. "Reasonable measures" include a minimum of two (2) attempts documented, such as: detailed records of telephone calls made and the results of those calls; copies of correspondence sent to the parent and responses received; detailed records of visits to the parent's home or work place and the results of those visits. Neither may lack of consent after the initial evaluation or the initial placement be a cause for denial of any other service, activity, or benefit of the local school district.

Parent consent means that the:

- A. parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;
- B. parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and,
- C. parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; however, if the parent revokes consent, that revocation is not retroactive.

Evaluation means that procedures are used to determine whether a student is disabled and provide information for use by the IEP team to determine the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class unless, before administration of that test or evaluation, consent is required of parents of all children. If a parent refuses consent for initial evaluation or reevaluation, this agency may continue to pursue those evaluations by using the due process hearing procedures. These procedures, which include mediation, are explained in Regulation V.6., Administrative Hearing Rights which follows in this section.

Personally identifiable means that records include:

- A. the name of the student, the student's parents, or other family member;
- B. the address of the student;
- C. a personal identifier, such as the student's social security number or student number; or,
- D. a list of personal characteristics or other information which would make it possible to identify the student with reasonable certainty.

6. ADMINISTRATIVE HEARING RIGHTS

Parents or this agency may initiate due process concerning the proposed action of the agency to initiate or refuse to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. These rights shall be assured through the procedures outlined for resolution conferences and state-level hearing panels.

Resolution Conference

The resolution conference is conducted by the chief administrative officer of this agency or a designee pursuant to Section 162.950, RSMo.

- A. Process: The resolution conference is informal. Witnesses are not sworn, and a written record is not maintained. The parents or guardian have the right to examine all educational records prior to the review. Both the school staff and the parents or guardian have the right to call witnesses, question witnesses, and present any written or oral information which pertains to the action.
- B. Timelines: The resolution conference must be held and the decision issued within ten (10) days from the date of the request. The time line may be extended by mutual agreement of the parties.
- C. Parent can waive the right to resolution conference and request a state-level hearing panel (three-member hearing panel). A request for state-level hearing shall be treated as a waiver of resolution conference and processed.

State-level Hearing Panel

Appeal of the resolution conference decision is to the state board of education pursuant to Section 162.961, RSMo. A request for a due process hearing shall include the child's name, address, school, issue, and suggested resolution of dispute, if known.

- A. Process: Except as provided below in expedited hearings under §162.961.6, RSMo, a panel of three individuals is empowered, one member designated by this agency, one member designated by the parents or guardian, and the chair selected by the State Department of Elementary and Secondary Education. The chair is a licensed attorney. If either party has not successfully chosen a willing and available panel member with ten (10) days after the Department of Elementary and Secondary Education receives the request for a due process hearing, the panel member(s) will be chosen instead by the Department. Each member must be determined to be impartial and be knowledgeable of students with disabilities.
- B. Hearing Rights: Any party to a hearing has the right to:
 - 1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;

- 2) present evidence and confront, cross-examine, and compel the attendance of witnesses;
- 3) prohibit the introduction of any evidence, including all evaluations and recommendations based on the offering party's evaluation at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
- 4) obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost; and,
- 5) obtain written or, at the option of the parents, electronic findings of fact and decisions at no cost.

In addition, the parents have the right to open the hearing to the public; otherwise, it is closed. The parents may also elect to have the student present at the hearing.

A copy of the written findings and decision shall be mailed to each party and to the State Department of Elementary and Secondary Education (DESE). The DESE shall provide a copy of the findings and decision, with all personal identifiers removed, to the Missouri Special Education Advisory Panel and shall make the findings and decision available to the public (with all personally identifiable information deleted).

- C. Timelines: Except in the case of an expedited hearing provided for below, the hearing panel must be empowered within fifteen (15) days of the date of the appeal of the resolution conference decision or the request for a three member hearing panel if the parents waive their right to a resolution conference. The hearing panel must conduct the hearing, render and mail a written decision within 45 days of the date of the request for due process. The decision timeline may be extended upon request of the party/parties and agreement by the hearing panel chair.

Site of the Hearing

Each hearing must be conducted at a time and place which is reasonably convenient to the parents and student involved.

Legal Services

The parent/guardian will be informed of any free or low-cost legal and other relevant services available in the area if:

- A. the parent requests the information; or,
- B. the parent or the agency initiates an impartial due process hearing.

Hearing Officers

Hearing officers shall not have a personal or professional interest in the matters that are before them which would conflict with their objectivity in the hearing. Hearing officers shall have an affirmative obligation to seek out any conflict of interest and withdraw from any matter in which a conflict is identified.

- A. A hearing shall not be held by an employee of this agency which is involved in the education or care of the student or an employee of the State Board of Education.
- B. Specific allegations of conflict of interest shall be filed with the Department of Elementary and Secondary Education, Division of Special Education, and investigated under the Child Complaint Process, Regulation VI.2, of the State Plan.
- C. A person who otherwise qualifies to conduct a hearing is not an employee of this agency because he or she is paid by the agency to serve as a hearing officer.

Hearing Officer Lists

The Department shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualification of each of those persons. Attorneys on contract to serve as chairs will be on a separate list. Others who serve as hearing panel members will be placed on the list if they meet training and assessment requirements of the Department, agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.

Training and Assessment Requirements for Hearing Officers

Hearing officers who do not serve in the role of chair must meet the following training requirements:

- A. attend a minimum of one out of every two trainings conducted by the Department of Elementary and Secondary Education. Trainings will be held approximately every 18 months. Failure to meet this requirement will result in the removal from the hearing officer list. Attendance at a future training session will be necessary to be placed back on the list; and,
- B. in extraordinary circumstances, the department has the discretion to waive this requirement. Waiver requests must be in writing with supporting documentation. Denial of a waiver is not appealable.

Mediation

Upon receipt of a request for due process hearing the parties will be offered the opportunity to mediate their dispute. Both parties must agree to mediation unless federal law provides to the contrary, and mediation will be provided at no cost to either party.

A. Process

The parties must mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Special Education Division.

- 1) Mediation must be scheduled within fifteen days of the selection of a mediator.
- 2) Mediation must be conducted at a time and place mutually agreed upon by the parties.
- 3) Mediation must be completed within thirty days of the agreement to mediate.
- 4) Any agreement reached during mediation must be in writing and delivered to each party.
- 5) No more than three persons can accompany each party unless the parties mutually agree on additional participants.
- 6) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.
- 7) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under Part B of IDEA.
- 8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to commencement of the process.

B. Mediator Qualifications

- 1) Mediators must be impartial and free of any conflict of interest.
- 2) Mediators shall not be employees of a this agency or employees of the State Board of Education. A person who otherwise qualifies as a mediator is not an employee of the State Board of Education or this agency solely because he or she is paid by the agency to serve as a mediator.
- 3) Mediators must have a minimum of 16 hours of training as a mediator.
- 4) Mediators, to be placed on the Department's mediator list, must meet the above requirements, and must: agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.

- 5) Mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

C. Mediation in the Absence of a Due Process Request

Parties have the right to seek mediation of their disputes outside of the state mediation process and due process system. However, the Department will only pay for mediation if the parties agree to it in connection with a due process request. Should the parties decide to mediate their disputes in the absence of a due process request, none of the state requirements for mediation apply.

D. Effect on Due Process Hearing Timelines

The process for choosing panel members and scheduling the due process hearing will occur simultaneously with the mediation process. In the event that the due process hearing is scheduled for a date prior to the date of completion of the mediation, one or both of the parties will need to request and obtain an extension of the due process hearing timeline from the Chairperson of the three member panel if the desire is to proceed with the mediation.

Civil Proceedings

Any party aggrieved by the findings and decisions made in a hearing may appeal the decision of the hearing panel to the state courts as provided in Chapter 536, RSMo, or in federal court without regard to the amount in controversy. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and shall base its decision on the preponderance of the evidence, granting the relief the court deems appropriate.

Maintenance of Placement

During the pendency of any administrative or judicial proceeding pursuant to Section 162.950 and Section 162.960 RSMo, there will be no change in the assignment or status of a student with a disability unless such change has been made with the written consent of the parent or guardian. However, students who are endangering themselves or others can have their status changed, without the written consent of the parent or guardian, pursuant to court order.

In an instance where a student is initially enrolling this agency and the parents or this agency request a hearing on the assignment of the student in a special education program, the student, with consent of the parents, will be placed in this agency, pending completion of the due process proceedings in accordance with the provisions of Section 162.955, RSMo.

When this agency contacts a State Board of Education operated program for consideration of a student's eligibility for acceptance and enrollment, this agency shall assure that the student will be enrolled or will maintain enrollment in this agency pending final action by the state.

If the decision of a hearing panel in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between this agency and the parents for purposes of "stay-put" pending and during judicial appeal.

Attorneys' Fees

In any action or proceeding brought under 20 U.S.C. Section 1415(E), the court, in its discretion, may award reasonable attorneys' fees as part of the cost to the parent or guardian who is a prevailing party pursuant to 20 U.S.C. Section 1415(E)(4).

Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under this section. This agency may use Part B funds for conducting an action or proceeding under this section.

A court award for reasonable attorney's fees is subject to the following:

- A. the award must be based on prevailing rates in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fee award;
- B. attorney fees and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to a parent if: the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative proceeding, at any time more than ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court or hearing officer finds that the relief finally obtained is not more favorable to the parents than the offer of settlement. However, if the parent prevails and was substantially justified in rejecting the settlement offer an award of attorney fees and related costs may be made;
- C. attorney fees may not be awarded related to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action; and,
- D. the court may reduce the amount of attorney fees awarded if: the parent unreasonably protracted the final resolution of the controversy, the amount unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience; the time spent and legal services furnished were excessive considering the nature of the action/proceeding; or, the attorney representing the parent did not provide to this agency the appropriate information in the due process hearing request required by regulation.

NOTE: Attorney fees may not be reduced if the court finds this agency unreasonably protracted the final resolution, or there was a violation of the Procedural Safeguards.

7. SURROGATE PARENTS (EDUCATIONAL SURROGATES)

This agency has established the following for the appointment of surrogate parents:

Identifying the Need for Appointment

Any person may advise this agency that a student with a disability within its jurisdiction may be in need of a person to act as a surrogate parent. Notice can be given to the agency responsible for providing education to students with disabilities or directly to the Division of Special Education.

Process of Appointment

When this agency is informed of a student with disabilities living within its jurisdiction, it shall, within thirty (30) days, determine whether a surrogate parent should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Division of Special Education. The Division, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as a surrogate parent. The Division shall maintain a registry of trained surrogate parents from which they will select individuals for appointment. If a surrogate parent dies, resigns, or is removed, within 15 days thereof, a replacement will be appointed.

Criteria for Appointment

The State Board of Education shall appoint a person to act as a surrogate for the parent or guardian of a student with a disability as defined in Section 162.675, RSMo, when:

- A. the student has no identified parent, guardian, or person acting as parent;
- B. the student has parents who, after reasonable efforts, cannot be located by this agency; and,
- C. the student is a ward of the state and is living in a facility or group home (and not with a person acting as a parent).

Definitions

This agency will use the following definitions when determining student eligibility to receive a surrogate appointment:

- A. the term "parent" means a parent, a guardian, a person acting as parent of a student, or a surrogate parent who has been appointed. The term does not include the State if the student is a ward of the State; and,
- B. the term "person acting as a parent of a child" refers to relatives of the child or private individuals allowed to act as parents of a child by the child's natural parents or guardians. For example, a grandparent, neighbor, governess, friend, or private individual caring for the child with the explicit or implicit approval of the child's natural parent or guardian would qualify as "a person acting as a parent of a child." If a child is represented by such a person, no surrogate parent is needed.

Qualifications for Appointment

Any person who is appointed to act as a surrogate parent shall:

- A. be at least 18 years of age;
- B. not be an employee of the State Board of Education or any governmental entity having responsibility for the education or care of the student with disabilities (a person otherwise qualified to be a surrogate parent is not an employee of an agency simply because he or she is reimbursed to serve as a surrogate parent) but can be an employee of a nonpublic agency that provides only non-educational care for the child;
- C. be free from any interest that may conflict with the interests of the student represented; and,
- D. have knowledge and skills that ensure adequate representation of the student.

Surrogate Parent Training

All surrogate parents shall participate in a training session in which they will become familiar with the Missouri Surrogate Parent Program, acquire a basic understanding of the special education process in Missouri, and develop the knowledge and skill necessary to adequately represent a student. DESE shall provide the surrogate parent training and may require assistance from this agency to present an effective training session.

This Agency's Responsibilities

Specifically, this agency shall:

- A. designate a staff member who will be responsible for overseeing the surrogate parent program in their district. Unless notified otherwise, DESE will assume that the surrogate parent contact person is the same as this agency's special education director or contact person;
- B. complete and return to DESE a "Determination of Need for Surrogate Appointment" form for each student believed to be eligible for receiving a surrogate appointment;
- C. assist DESE in recruiting surrogate parent volunteers and submit their names and addresses to DESE;
- D. be available to aid DESE with local surrogate parent training; and,
- E. complete and return to DESE an "LEA Educational Surrogate Evaluation" form for each surrogate serving in this agency.

Duties of the Surrogate Parent

An individual appointed to act as a surrogate parent shall:

- A. complete and return to DESE a Surrogate Parent Application and Verification of Eligibility form;
- B. attend a surrogate parent training session;
- C. represent their assigned student in all decisions relating to the student's education including matters related to the identification, evaluation, and educational placement of the child, as well as the provision of a free appropriate public education to the child; and,
- D. notify the agency or DESE if any conflicts develop, or if they will no longer be able to fulfill their surrogate parent role.

Immunity from Liability

The person appointed to act as a surrogate parent shall be immune from liability for any civil damage arising from any act or omission in representing the student in any decision related to the student's education.

This immunity shall not apply to intentional conduct, wanton and willful conduct, or gross negligence.

Reimbursement

The person appointed to act as a surrogate parent shall be reimbursed by the State Board of Education for all reasonable and necessary expenses incurred as a result of his or her representation of a student with a disability. Determination of "reasonable and necessary" expenses shall be made at the discretion of the Department and pursuant to State Office of Administration guidelines. Such expenses do not include attorney fees or child care/babysitting expenses.

Evaluation

DESE will send to this agency an evaluation form to complete for each surrogate parent in which they will recommend the continuation or termination of the surrogate appointment. This agency shall provide brief written discussions supporting a recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Division will investigate and reach a decision on whether to terminate.

Termination

The surrogate parent appointment shall be terminated at the request of the surrogate parent or in the event of any of the following situations:

- A. the conclusions of the initial educational evaluation indicate that the student does not qualify for receiving special education;

- B. the student's parent or guardian reappears to represent him or her, or wardship is terminated;
- C. the student is no longer in need of special education services;
- D. the student reaches the age of majority;
- E. the surrogate parent fails to fulfill their responsibilities as defined by state and federal regulations; and,
- F. the student graduates and/or reaches age 21.

8. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a student with a disability reaches age 18, this agency shall provide any required notice to both the student and the parents. All other rights accorded to parents under Part B of IDEA transfer to the student. The student and parent must be notified of the transfer of rights. The transfer does not apply if the student is declared incompetent by a court of competent jurisdiction. Transfer of rights to students who are incarcerated in an adult state correctional institution occurs upon incarceration regardless of whether the student has reached age 18.

9. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS

Ten (10) School Days or Less

A child may be removed from his current placement for ten school days or less by this agency, to an appropriate interim alternative educational setting, another setting, or suspension without providing services, unless the conduct involves drugs or weapons, in which case the change may be for 45 days and would require services in an alternative setting as explained below or the conduct involved is unrelated to the child's disability, in which case the change may involve a long-term suspension or expulsion and would require services in an alternative setting as explained below. A long-term suspension is a suspension in excess of ten (10) days consecutively, or in excess of ten (10) days cumulatively in a school year where a pattern of suspension is created. To determine if a pattern is created, three factors are considered: duration of each removal, frequency of each removal, and total amount of time child is removed for that school year.

45 Days

A child's placement may be changed for 45 days by this agency, to an appropriate interim alternative educational setting, if the child possessed a dangerous weapon at school or a school function or knowingly possessed or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. On the date on which the decision to take that action is made, the parent must be notified of the decision and provided the Procedural Safeguards statement.

Behavioral Assessment

On or before the end of the tenth business day of a disciplinary action which for the first time that school year exceeds 10 days cumulatively, if this agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the discipline action, the agency must convene an IEP meeting to develop an assessment plan to address that behavior. If the child already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior involved in the disciplinary action. If the child does not already have such a plan, the IEP team shall develop one. Any subsequent removals, which do not constitute a disciplinary change of placement, require that the IEP team review the behavior intervention plan and its implementation to determine if modifications are necessary. If one or more of the IEP team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

Access to Services

Any interim alternative educational setting determination involving a long-term suspension or disciplinary change of placement shall be made by the IEP team, must be selected to enable the child to continue to progress in the general curriculum and to continue to receive services required in the current IEP that will enable the child to meet the goals set out in that IEP, and must include services and modifications designed to address the behavior involved in the disciplinary action so that it does not recur. Services for short-term suspensions which exceed ten (10) days cumulatively are only required if this agency determines this necessary for the child to appropriately progress.

Manifestation Determination

Immediately, if possible, but no later than ten (10) school days after the date on which the decision to implement a disciplinary change of placement (e.g., 45 day interim alternative educational placement, long-term suspension), the IEP team shall determine whether there is a relationship between the child's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to the child's disability, disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities. However, in that event, the child must still receive a free appropriate public education. If this agency initiates disciplinary procedures applicable to all children, the special education and disciplinary records of the child shall be transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. If the parent disagrees with a determination that the child's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation involving a disciplinary change of placement (e.g., 45 day interim alternative educational

placement, long-term suspension), the parent has the right to request an expedited due process hearing. The IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team first considers all relevant information, including evaluation and diagnostic results (including results or other relevant information provided by the parent), observations of the child, the child's IEP and placement, and then determines that:

- A. the IEP and placement were appropriate and special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- B. the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action; and,
- C. the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

In the absence of any of these factors being considered or determinations made, the IEP team must consider the behavior a manifestation of his disability. If the team identified deficiencies in the child's IEP or placement or in the implementation, it must take immediate steps to remedy those deficiencies.

In reviewing a manifestation determination decision, the hearing officer shall determine whether this agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the listed factors being considered and the listed determinations being made.

Dangerous Students

If this agency believes the child will injure himself or others, this agency has the right to obtain an expedited due process hearing to seek a 45 day interim alternative educational setting. This procedure may be repeated as necessary. The parent must be notified of the decision to seek this order on the day the decision is made and provided the procedural safeguards statement. At that hearing, the hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer:

- A. determines this agency has demonstrated by substantial evidence (i.e. beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or others;
- B. considers the appropriateness of the child's current placement;
- C. considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement including the use of supplementary aids and services; and,

- D. determines that the interim alternative educational setting enables the child to continue to progress in the general curriculum and continue to receive services required by his current IEP.

“Stay-put” Under Disciplinary Actions

If the parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination and when the child is disciplined for weapons, drugs, or because they are a danger to themselves or others, the child will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise). If agency personnel maintain that it is dangerous for the student to be in the current placement (the placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, this agency may request an expedited hearing.

Protection for Children Not Yet Eligible for Special Education and Related Services

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if this agency did not have prior knowledge of the disability. If this agency is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline. This agency has knowledge of the disability when:

- A. the parent has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) that the student needs special education services; or,
- B. the student’s behavior or performance has demonstrated a need for services; or,
- C. the parent has requested an evaluation; or,
- D. the student’s teacher or other staff; employed by this agency, has expressed concern about the student’s behavior or performance to the director of special education or to other personnel in accordance with this agency’s established child find or special education referral system.

This agency would not be deemed to have knowledge that the child is a child with a disability, if this agency conducted an evaluation and determined that the child was not a child with a disability, or determined that an evaluation was not necessary and provided proper Notice of Action Refused.

If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed (assuming this agency is not deemed to have knowledge that the child is a child with a disability prior to the behavior that precipitated the disciplinary action), the child remains in the educational placement determined by this agency, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, this agency shall provide special education and related services and follow all required procedures for disciplining students with disabilities.

Reporting Crimes Committed by Students With Disabilities

This agency, when reporting crimes, to appropriate law enforcement and judicial authorities, committed by students with disabilities, shall ensure copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. Transmittal of records will be in accordance with Family Educational Rights and Privacy Act (FERPA).

Definitions

- A. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812 (c)).
- B. Illegal drug means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal Law.
- C. Substantial evidence means beyond a preponderance of the evidence.
- D. Weapon means dangerous weapon as defined under paragraph (2) of the first subsection (g) of Section 930 of title 18, United States Code. The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Expedited Due Process Hearings

An expedited hearing requested in connection with a disciplinary action (involving a disciplinary change of placement) shall be held by a hearing officer appointed by the Department of Elementary and Secondary Education from a list of contract attorneys, within 45-days of the date the department receives the hearing request. A decision must be rendered within the same time-line and no extensions of the time-line are permitted. No discovery is permissible in an expedited hearing. All other provisions within the Procedural Safeguards regulations of this State Plan regarding hearing officers and hearings are applicable if not inconsistent with this subsection on expedited due process hearings.